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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,400	04/23/2001	Randal Lee Bertram	RAL920000115US1	4490

47052 7590 03/28/2005

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PALO ALTO, CA 94303

EXAMINER
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KANG, PAUL H

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/840,400

**Applicant(s)**

BERTRAM ET AL.

**Examiner**

Paul H Kang

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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### **DETAILED ACTION**

1. Examiner Sajid Yussuf is no longer assigned to the present patent application. This application is now assigned to Examiner Paul H. Kang. In examining this patent application, full faith and credit has been given to the search and action of the previous examiner. MPEP § 719.05.

2. Claim 12 has been cancelled. Claims 1-11 and 13-15 are now pending.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

a. A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- b. Determining the scope and contents of the prior art.
- c. Ascertaining the differences between the prior art and the claims at issue.
- d. Resolving the level of ordinary skill in the pertinent art.
- e. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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***Claims 1-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoyer et al. (US Patent No. 6,339,750 and Hoyer hereinafter) in view of Sipple et al. (US Patent No. 6,405,327 and Sipple hereinafter).***

5. As per claim(s) 1 Hoyer discloses (a) obtaining performance: data for a plurality of monitors for the at least one resource group, (See Column 8 Lines 17-50) (b) analyzing the performance data to determine whether performance of the system can be improved using the at least one resource group, (See Column 6 Lines 43-67); and (c) graphically displaying performance data for at least one monitor of the plurality of monitors for the at least one resource group, (See Column 8 Lines 17-50).

However, Hoyer does not explicitly teach forecasting a bottleneck for the monitor of the plurality of monitors. In the same field of endeavor, Sipple teaches a system and method for performance monitoring wherein bottlenecks are forecasted (Sipple, Abstract and col. 6, lines 50-61).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the forecast of bottlenecks as taught by Sipple into the performance monitoring system of Hoyer for the purpose of providing early warnings for potential problems.

6. As per claim(s) 2 Hoyer-Sipple teaches the claimed invention as described in claim(s) 1 above and furthermore discloses (cl) displaying the performance data for the at least one monitor on the plurality of nodes in a single graph, (Hoyer, See Column 18 Lines 1-13 & Figure 7).

7. As per claim(s) 4 Hoyer-Sipple teaches the claimed invention as described in claim(s) 1-2 above and furthermore discloses plurality of monitors further include CPU utilization for the at least one resource group, (Hoyer, See Column 7 Lines 18-21).

8. As per claim(s) 9 Hoyer-Sipple teaches the claimed invention as described in claim(s) 1-7 above and furthermore discloses (d) allowing a user to define the at least one resource group, (Hoyer, See Column 6 Lines 56-67).

9. As per claim(s) 10 Hoyer-Sipple teaches the claimed invention as described in claim(s) 1-9 above and furthermore discloses (b1) determining whether performance of the system can be improved by moving the at least one resource group between the plurality of nodes, (See Hoyer, Column 6 Lines 43-67).

10. As per claim(s) 11 Hoyer-Sipple teaches the claimed invention as described in claim(s) 1-10 above and furthermore discloses (b2) determining an optimal assignment to a node of the plurality of nodes for the at least one resource group, (See Hoyer, Column 6 Lines 28-67).

11. As per claim(s) 13 Hoyer-Sipple discloses (a) obtaining performance data for a plurality of monitors for the at least one resource group, (See Column 8 Lines 17-58) (b) analyzing the performance data to determine whether performance of the system can be improved using the at least one resource group, (See Column 6 Lines 43-67); (c) graphically displaying performance

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data for at least one monitor of the plurality of monitors for the at least one resource group, (See Hoyer, Column 8 Lines 17-50).

12. As per claim(s) 14 Hoyer-Sipple discloses means for obtaining performance data for at least one resource group, the performance data relating to a plurality of monitors for the at least one resource group, (See Column 8 Lines 17-50) and for analyzing the performance data to determine whether performance of the computer system can be improved using the at least one resource group, (See Column 6 Lines 43-67); and a graphical user interface for displaying performance data for at least one monitor of the plurality of monitors for the at least one resource group, (See Hoyer, Column 8 Lines 17-50).

13. As per claim(s) 15 Hoyer-Sipple teaches the claimed invention as described in claim(s) 14 above and furthermore discloses the obtaining and analyzing means further include a plurality of agents residing in the plurality of computer systems, (See Hoyer, Column 7 Lines 22-30).

14. As per claim(s) 3 Hoyer-Sipple discloses plurality of monitors further include disk, memory, network, LAN, and interconnect utilization for the at least one resource group (See Sipple, Column 6 Lines 11-60).

### ***Response to Arguments***

15. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection. Applicant argued McKnight does not qualify as prior art.

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The new grounds of rejection set forth above renders this argument moot.

***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

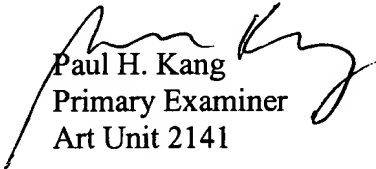
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul H Kang whose telephone number is (571) 272-3882. The examiner can normally be reached on 9 hour flex. First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul H. Kang  
Primary Examiner  
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